CPMG / KA / BG-GPO/13/2003-2005



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೩೮	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಅಕ್ಟೋಬರ್ ೨೩, ೨೦೦೩ (ಕಾರ್ತಿಕ ೧, ಶಕ ವರ್ಷ ೧೯೨೫)	ಸಂಚಿಕೆ ೪೨

ಭಾಗ – ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001
NOTIFICATION
ಸಿಆಸುಇ / 4 / ಚುತಅ / 2003 **DATED 16th September, 2003**
25 Bhadrapada, 1925 (Saka)

No. 82/KT-LA/26/99/2002:- In pursuance of sub-section 2(b) of Section 116(C) of the Representation of the People Act, 1951, the Election Commission hereby published the order, dated the 19th September, 2002 the Supreme Court of India in Civil Appeal No. 7951 filed against the Judgement of the High Court of Karnataka State in Election Petition No. 26 of 1999.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7951 OF 2001

Sri Shivakumar D.K. Appellant

Versus

Sri Basavaraju & Ors Respondents

ORDER

Heard the learned counsel for the parties.

Being aggrieved and dissatisfied by the judgement and order dated 29.9.2000 passed in Election Petition No. 26/1999 by the High Court of Karnataka at Bangalore, directing framing of issues and proceeding further with the election petition, returned candidate has preferred this appeal.

At the time of the hearing of this matter, learned counsel appearing for the appellant submitted that the main contentions which are raised in this appeal pertain to the incidents which have taken place before returned candidate submitted his nomination form.

As against this, the learned counsel appearing for the election petitioner pointed out that before the High Court it was conceded by the learned counsel for the returned candidate as under:-

"................... that though the corrupt practice being distinct and separate, "that part of the pleading relating to bribery, undue influence and excess expenditure, can be struck out and only paragraphs 23 to 25 relating to allegations under Section 123 (4) could be tried." But, the Electoral Laws do not contemplate a piece-meal enquiry or part hearing removing certain issues. If rejection, it should be full and if needs hearing, there is nothing wrong on hearing on other aspects of the matter as well. In view of the fair concession made and even putting it in writing in the submissions made before this Court, I feel that this is a case where evidence is necessary and the petition cannot be thrown out on the preliminary issue alone."

In view of the aforesaid facts, in our view, it cannot be said that the learned Judge committed any error in directing the parties to proceed further after framing of the issues. However, it is made clear that no issue would be framed pertaining to incidents and allegations which are relating to corrupt practices alleged to have been committed prior to the date of submission of nomination papers filed by the returned candidate. With this clarification, this appeal is allowed to the aforesaid extent. The appeal stands disposed of accordingly. There shall be no order as to costs.

....
M.B. Shah

....
D.M. Dharmadhikari

New Delhi,
September 19, 2002

By Order,

PR-79

TAPAS KUMAR
Secretary
Election Commission of India.

ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001
NOTIFICATION
ಸಿಆಸುಇ / 5 / ಚುತಅ / 2003 **DATED 18th September, 2003**
27 Bhadrapada, 1925 (Saka)

No. 82/KT-HP/1/2002(Bye):- In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission hereby published the Judgement of the High Court of Karnataka, Bangalore dated the 16th July, 2003 in Election Petition No. 1 of 2002.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 16TH DAY OF JULY 2003
BEFORE
THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN
ELECTION PETITION NO. 1/2002

BETWEEN:
Sri B.N. Krishna Murthy
S/o. Narasappa Gowda,
age 45 yrs, No. 71A,
1st 'J' Main Road,
1st Cross, Nagarbhavi II Stage,
Bangalore ....Petitioner
(By Sri S. Shivanand, M/s. Law Associates for petitioner)

AND:
1. Sri H.D. Devegowda
   Former Prime Minister of India
   Father's name not known to petitioner
   Resident of Padavalahippe Village
   Maragondanahalli Post

Kasaba Hobli, Holenarasipura Taluk
Hassan District
and also at
No. 5, Safdarjung Lane
New Delhi - 110001 ....Respondent

(By Sri R.N. Narasimha Murthy, Senior Counsel with Sri D.L. Jagadeesh & Sri A.S. Mahesha, Advs., for respondent)

This Election Petition is filed U/s. 81 of Representation of people Act 1951, by the petitioner - voter at 2002 Bye-election to the House of Parliament from No. 11, Kanakapura Parliamentary Constituency held on 24.2.2002 praying to name the persons under section 99 of Representation of People Act, 1951 for having committed the corrupt practices within the meaning of section 123 of the Representation of People Act, (b) to declare the Election of Respondent No. 11, Kanakapura Parliamentary constituency to the 13th Lok Sabha as void and illegal, and (c) to declare the Election of respondent as void for non-compliance of the order of the Election Commission/etc.,

This Election Petition coming on for evidence from 17.1.2003 to 30.5.2003 and for arguments between 6.6.2003 and 24.6.2003 and for pronouncement of order on 16.7.2003 in the presence of M/s. Law Associates by - Sri S. Shivanand, Adv., for petitioner and Sri R.N. Narasimha Murthy, Senior Counsel and Sri D.L. Jagadeesh and Sri A.S. Mahesha, Advocates for respondent, and that for the reasons stated in the order, it is ordered and decreed that the Election Petition be and the same is hereby dismissed.

It is further ordered and decreed that the petitioner do pay the cost of Rs. 5000/- (Rupees Five Thousand only) to the respondent.

Registrar (Judicial)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 16TH DAY OF JULY 2003
BEFORE
THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN
ELECTION PETITION NO. 1 OF 2002

BETWEEN:

Sri B.N. Krishna Murthy
S/o. Narasappa Gowda,
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AND:

1. Sri H.D. Devegowda
Former Prime Minister of India
Father's name not known to petitioner
Resident of Padavalahippe Village
Maragondanahalli Post
Kasaba Hobli, Holenarasipura Taluk
Hassan District
and also at
No. 5, Safdarjung Lane
New Delhi - 110001 ....Respondent

(By Sri R.N. Narasimha Murthy, Senior Counsel with Sri D.L. Jagadeesh & Sri A.S. Mahesha, Advocates for Respondent)

This election petition filed praying (a) to name the persons under Section 99 of the Representation of Peoples Act, 1951 for having committed the corrupt practices within the meaning of Section 123 of the Act; (b) to declare the election of Respondent to No. 11, Kanakapura Parliamentary

Constituency to the 13th Lok Sabha as void and illegal; and (c) to declare the election of Respondent as void for non-compliance of the order of the Election Commission etc.,

This petition, having heard and reserved for orders, is coming on pronouncement of order, this day, court made the following:

ORDER

The petitioner is a voter in Uttarahalli Assembly segment of Kanakapura Parliamentary Constituency. He has filed this election petition under Section 81 of the Representation of Peoples Act, 1951 [for short, the Act] for the following reliefs:

a) to name the respondent and eight others [Siddaramaiah, Byregowda, PGR Sindhya, Rameshkumar, N. Bachegowda, H.D. Revanna, V. Somanna and H.D. Kumaraswamy] under Section 99 of the Representation of Peoples Act, 1951, for having committed corrupt practices, within the meaning of Sec. 123 of the Act;
b) to declare the election of respondent to "No. 11, Kanakapura Parliamentary Constituency" to the 13th Lok Sabha, as void and illegal, for having committed corrupt practices; and
c) to declare that the election of respondent as void for non-compliance of the order of the Election Commission made under Constitution of India, which materially affected the result of the election.
d) costs of the petition.

2. There were 14 contesting candidates in the said election. Respondent was the Janata Dal (Secular) candidate. D.K. Shivakumar was the Indian National Congress Candidate; and K.S. Eswarappa was the Bharathiya Janata party candidate. Other eleven candidates were Dyavegowda, M. Venkatesh, H.R. Sripada Rao, Alur P. Nagappa, B.G. Devegowda, T. Dyavegowda, Maradi Thota Renuka Bheemappa, Ravikumar, Shivakumar, Shivakumar and Hotte Paksha Rajendra Prasad. Out of the votes polled (14,05,716) Respondent secured 5,81,669 votes and D.K. Shivakumar secured 5,28,133 votes and K.S. Eswarappa secured 2,28,134 votes. The remaining candidates secured negligible votes varying from 1318 to 22960 votes. Respondent was declared elected on 24.2.2002.

3. In this election petition, the petitioner has alleged that the respondent has committed four acts of corrupt practice as defined in Sec. 123 of the Act and therefore his election has to be declared as void. The four acts are:

(i) On 31.1.2002 at a public meeting organized by the supporters of the respondent and his political party at Anekal town, situated within the Kanakapura Lok Sabha Constituency, the respondent while addressing public and the party workers, made the following statement, intended to promote enmity between Hindus, Muslims and Christians for the furtherance of his election prospects:

ನಾನು ಲೋಕಸಭೆಗೆ ಹೋದರೆ ಎಲ್ಲವನ್ನೂ ಪ್ರಶ್ನಿಸುತ್ತೇನೆ. ಮಸ್ಜಿದ್, ಚರ್ಚ್ ಬೀಳಿಸಿದರೆ ಸುಮ್ಮನಿರುವುದಿಲ್ಲ. ಖುರಾನ್, ಬೈಬಲ್ ಸುಟ್ಟರೆ ಸುಮ್ಮನಿರಲಾರೆ.

[The English translation: *"If I am elected to Lok Sabha. I will question every thing. I will not keep quiet if Mosques and Churches are demolished. I cannot keep quiet if Koran and Bible are burnt.]*

Petitioner relied on a report of the speech which appeared in the Kannada daily Kannada Prbha dated 1.2.2002. Petitioner claims that speech amounts to a corrupt practice within the meaning of Section 123(3) and (3A) of the Act.

(ii) The respondent and his supporters arranged a public meeting, in the guise of celebrating the birth day of Sri Balagangadhara Natha Swamiji, for free distribution of rice packets on 17.2.2002, between 10.30 to 11.00 am, at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79. Invitation pamphlets were issued under the caption of *"Sri Muneshwara Swamy and Maramma Devi Prathishtapana and Building inauguration"* which announced rice distribution to poor in connection with the Birthday Celebration of *"Sri Balagangadharanatha Swamiji's birthday function".* The pamphlet stated that Respondent would preside over the function; that Siddaramaiah [President of Janata Dal (S) and ex-Deputy Chief Minister], M. Srinivas [ex-MP], H.D. Kumaraswamy [ex-MP], P.G.R. Sindhya [MLA and ex-Minister], N. Bachegowda [MLA and ex-Minister], V. Somanna [MLA and ex-Minister]. Sri Gopalaiah and Smt Chandramma [Councillors, Bangalore City Corporation] would be the Chief Guests; and that several others including Umashankar (Member of Pattanagere Municipal Council) would be the special invitees to the said function. The respondent distributed rice packets to the voters of the constituency who were residing at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79. In the said function, apart from the respondent, other persons whose names were mentioned in the said invitation were present and they also distributed

rice packets to a few voters of the constituency with the consent of the respondent. The distribution of free rice packets was with a view to woo the voters. One Venugopal, Prabhudev, G. Manjunath, Suresh, Jeyanna, S. Vasanthkumar, Byrappa, P. Ranganath, Lokesh, Suresh and M. Narayanappa, among other voters of the constituency, received such rice packets. B.G. Devegowda, one of the contesting candidates lodged a complaint before the Election Commission of India regarding the said function and distribution of rice packets. Thus the Respondent, and the persons named in the invitation with the consent of the respondent, committed a corrupt practice of bribery within the meaning of Section 123(1)(A)(b) of the Act.

(iii) The respondent and others with his consent, took some citizens into their custody and made them semi-nude and beat them. By such act they tried to bring undue influence over the voters, so that they will vote against the Congress candidate. The respondent along with his two sons H.D. Revanna and H.D. Kumaraswamy, and his other family members and followers including Siddaramaiah and V. Somanna with the protection of SPG, took some citizens into their custody under threat, at about 4.00 am on 21.2.2002 [date of polling], stripped them semi-nude and beat them up and created a scence and used *Udaya* TV to telecast the said scene on the day of the poll on hourly basis so as to prevent the voters from coming to the polling booths and voting By the said acts violating the human dignity and decency, and by threats, the Respondent and his followers indirectly interfered with the electoral right of the voters and prejudicially affected the prospects of Indian National Congress candidate, as nearly 50,000 to 60,000 voters in Urban and Semi-urban areas did not exercise their franchise. The said action amounted to a corrupt practice of undue influence under Section 123(2) of the Act.

(iv) The respondent used his financial and political clout in the media particularly with the *Udaya* TV and got telecast an appeal by his wife Chennamma to vote for him on the night of 20th February, 2002, close to the polling day. At that time, the said Chennamma was under medical treatment (for burn injuries caused by a relative of respondent) and had difficulty in speaking. Yet she was made to appear on the TV and appeal to the voters to cast their votes in favour of her husband (respondent) on the ground that the respondent had done many things for the State of Karnataka and it was his last election. It amounted to wielding indue influence over the voters and interfering with free exercise of electoral rights and thus a corrupt practice under Section 123(2) of the Act. It also violated Sec. 126(1)(b) prohibiting display of election matter by means to television to the public during the period of 48 hours ending with the hour fixed for conclusion of poll and the Order dated 20.8.1999 of the Election Commission of India prohibiting use of electronic media for advertisement or compaign during elections.

3.1. Petitioner also averred that the respondent using his clout as Ex-Prime Minister of India had managed to get a press note issued by Election Commission of India alleging that the Indian National Congress candidate had violated the election model code of conduct; and the congress candidate had lodged complaint against the Respondent alleging forgery. However the petitioner subsequently did not pursue this subject and omitted this matter while suggesting Draft issues.

4. Respondent filed his written statement denying the averment that he or any one with his consent committed any corrupt practice. In particular:

i) He did not admit that on 31.1.2002 at public meeting at Anekal, he made a statement about Mosques and Churches or Koran and Bible or made any statement to promote enmity among people, on the basis of religion to further his electoral prospects. Alternatively, he submitted that the remarks attributed to him were not objectionable and did not attract Sec. 123.

ii) He denied having arranged any public meeting or function either by himself or through his supporters to celebrate the birthday of Sri Balagangadharanatha Swami, as a cover for free distribution of rice packets on 17-2-2002 at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79. He denied having presiding over or participating in any such function. He stated that he was not aware as to whether any one else belonging to his party were present in the said function as chief guests or as special invitees. He specifically denied that he or anyone with his consent distributed rice packets to voters residing at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79.

iii) He denied that he or others with his consent, took any citizens into custody on 21.2.2002 or made them semi-nude or beat them up and got wide publicity for that incident through *Udaya TV,* to

prevent voters from coming to polling booths and exercising their vote. He denied each and every allegation in para-17 of the petition in regard to the said incident.

iv) He denied that he used any clout with the media, particularly *Udaya* TV, and got telecast an appeal by his wife Chennamma on 20.2.2002 or any other day. While admitting that his wife was taking medical treatment due to burn injuries caused by a relative, he denied that she was unable to speak or that he forced her to appear on the TV to appeal for votes for him. He denied having made any kind of election campaign during the period of 48 hours ending with the hour fixed for the conclusion of the poll.

He denied having used any influence to get issued any press release against any candidate by the Election Commission. He contended that the averments in the petition were extremely vague and did not amount to any corrupt practice. He contend that as full particulars of the alleged corrupt practices were not furnished, as required under Section 83 of the Act, the petition was liable to be dismissed. He also contended that there was no cause of action for petition. He also sought dismissal of the petition for misjoinder of Respondent 2 to 9 (Note: Subsequently by Order dated 20.9.2002 Respondents 2 to 9 were deleted). The petitioner filed a reply statement traversing the averments in the written statement and reiterating the petition averments.

5. On the said pleadings, the following issues were framed on 15.11.2002:

1) Whether the petitioner proves that on 31.1.2002 a public meeting was organized at Anekal town by the Respondent and his supporters, wherein they made Speeches/Statements promoting or attempting to promote feelings of enmity or hatred among citizens (Hindus and Muslims/Christians) on grounds of religion, to further the election prospects of the Respondent and thereby indulged in an Electoral corrupt practice.

2) Whether the petitioner proves that the respondent and his supporters arranged a public meeting on 17.2.2002 at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79 in the guise of celebrating the birth day of Sri Balagangadhara Natha Swamiji and distributed rice packets to poorer classes at that function and also at the Inauguration of 'Sri Muneshwara Swamy and Maramma Devi Prathishtapana and Building' and thereby committed any Electoral corrupt practice?

3) Whether the petitioner proves that the respondent telecast an appeal by his wife on 20.2.2002 with the intention of exercising undue influence resulting in interference with free exercise of electoral right?

4) Whether the petitioner proves that the persons named in paragraph-11 of the Election petition are to be named as persons involved in Electoral corrupt practice under Section 99 of the Representation of People Act, 1951?

5) Whether the petitioner has made out any ground to set aside the election of the respondent?

6) What Order?

Additional Issue (framed on 31.1.2003)

1. Whether the petitioner proves that the respondent has at his instance paraded the citizens semi-nude on eve of poll to create fear among the voters, which is a corrupt practice of undue influence. On behalf of the petitioner. 13 witnesses were examined including petitioner. He got marked Exp 1 to 13 Respondent examined himself as RW1 and got marked one document as Ex.R1.

6. Before considering the evidence with reference to the issues, it is necessary to keep in view the degree of proof required in election petitions. It is well settled that corrupt practices relating to elections are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action, but proof beyond reasonable doubt as in criminal trials. A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, court should be very careful in scrutinising the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice as alleged. [vide *RAHIM KHAN vs KHURSHID AHMED (1974[2] SCC. 660), SURINDER SINGH vs*

HARDAYAL SINGH (AIR 1985 SC 89); MAHANTH SHREONATH vs CHOUDHRY RANBIR SINGH (1970(3) SCC 647); M. NARAYANA RAO vs G. VENKATAREDDY (AIR 1977 SC 208); MANMOHAN KALIA vs YASH (1984[3] SCC 499) and R.P. ATHITHAN vs P.H. PANDYAN (AIR 1996 SC 1599). A constitution Bench of the Supreme Court held thus in *MOHAN SINGH vs BHANWAR LAL (AIR 1964 SC. 1366):*

> *"The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."*

Re:Issue (1):

7. This issue consists of three parts viz., i) whether the respondent made a speech at a public meeting organized at Anekal on 31.1.2002; (ii) If so, whether the respondent, in such speech, stated that he would not keep quiet if mosques and churches were demolished and he cannot keep quiet if Koran and Bible were burnt and that he will question every thing if he was elected to Lok Sabha; and (iii) If the respondent made such a statement, whether it amounts to promoting or attempting to promote feelings of enmity or hatred among the citizens [Hindus on the one hand and Muslims and Christians on the other] on the ground of religion, for the furtherance of his election prospects.

8. Petitioner admits that what is alleged by him in the petition and his evidence, in regard to the Anekal meeting held on 31.1.2002 was not with reference to any personal knowledge, but purely based on a report which appeared in *Kannada Prabha,* a Kannada daily, dated 1.2.2002. However, when the petitioner wanted to summon the Police Sub-Inspector (Law and Order), Anekal Police Station, and the Superintendent of Police, Bangalore Rural District, to establish that such a meeting took place, learned counsel for the respondent filed a memo dated 18.3.2003 clarifying that the Respondent does not dispute that a public meeting was held on 31.1.2002 at Anekal. Further, the respondent (RW1), in his evidence, admitted that he attended and addressed a meeting at Anekal on 31.1.2002. Therefore, the fact that the Respondent addressed a public meeting at Anekal on 31.1.2002 is established.

9. In regard to second part, the only document available is the *Kannada Prabha* daily dated 1.2.2002 (Ex.P2) which contains a report regarding the meeting marked as Ex.P2(a). The relevant portion of the report, referring to the alleged offending remarks of the respondent (extracted in para 3(i) above) has been marked as Ex.P2(b). The oral evidence consists of the evidence of the petitioner [PW1], *Kannada Prabha* News Editor [B.V. Mallikarjunaiah, examined as PW7] and *Kannada Prabha* Reporter [K.M. Ravishankar, examined as PW12].

10. PW1 has stated that by reading the *Kannada Prabha* newspaper on 1.2.2002, he came to know that at public meeting organized on 31.1.2002 at Anekal, the respondent made a statement that if he was elected to Lok Sabha, he would not permit mosques and churches to be demolished nor would he keep quiet if Koran and Bible were burnt. In his cross-examination, PW1 specifically admits that he was not personally present at the Anekal meeting on 31.1.2002 and whatever he deposed was based on the report in *Kannada Prabha* dated 1.2.2002. His evidence is therefore of no relevance.

11. B.V. Mallikarjunaiah [PW7], who was the New Editor of *Kannada Prabha* in January and February, 2002, identified the newspaper dated 1.2.2002 [ExP2]. He stated that the report at ExP2(a) relating to Anekal meeting attended by the respondent on 31.1.2002, was based on a report filed by the reporter assigned to cover the said meeting; that he was not personally aware of what transpired at the said meeting; that all that he can say is that what is reported at ExP2(a) is based on the report filed by one of his reporters; and that the Reporters of *Kannada Prabha* do not record the speeches made at any public meeting, but file their reports based on the notes made, while attending the meetings. He stated that he was not in a position to give the name of the Reporter who filed the said report. He also stated that while filing the report, the Reporter does not file his/her notes made in regard to the meeting. He stated that he had published the said report at ExP2(a) by believing the Reporter of the Newspaper. As he has no personal knowledge, his evidence also, may not be much assistance, except to establish that a report in regard to the Anekal meeting of 31.1.2002 appeared in *Kannada Prabha* dated 1.2.2002 and it was based on the report filed by the newspaper's Reporter.

12. Sri K.M. Ravishankar [PW12] stated that in his capacity as Reporter of *Kannada Prabha* he attended the public meeting addressed by the respondent at Anekal on 31.1.2002; that the News Report which appeared in the *Kannada Prabha* dated 1.2.2002, as per ExP2(a) was based on the report filed by

him; and that the report at ExP2(a) and in particular the statement attributed to the respondent as per ExP2(b) were exactly in terms of what he had reported. He stated that the respondent made a statement as per ExP2(b). He also stated that the report filed by him was of the highlights and important points of the speech and not a complete text of the speech. In the cross-examination, PW12 stated that the speech was of a duration 110 minutes; that he made notes in his notebook and on the basis of the notes, he prepared the report and sent it to the newspaper; that he does not keep the notebooks containing such notes and he has not retained the note book containing the notes regarding the Anekal meeting covered by ExP2(a); that he does not know shorthand writing and that he does not make a verbatim record of what is stated, but on account of his experience as a reporter, he records the essence of what is stated in a correct form. He fairly admits that he cannot claim that what all he recorded and all that he reported are 100% correct, as it was impossible. But, in regard to the statement at ExP2(b), attributed to the respondent, he stated that, he was confident that what was reported is correct.

13. Learned counsel for the petitioner, contended that PW12 is an independent witness, who had made the report in the usual course of his work as a Reporter and there is nothing to disbelieve his evidence. He submitted that the evidence PW12 should be preferred to that of the interested evidence of Respondent (RW1) who denied having made any such statement at the Anekal meeting. On the other hand Learned Counsel for the Respondent contended that in the absence of an audio recording of the speech and in view of the specific denial by the Respondent, the evidence of PW12 as to the contents of the speech cannot be relied on. He pointed out that PW12 does not know shorthand, that PW12 claims to have written the Report on the basis of notes made in long hand of a speech of a duration of 110 minutes, that the said notes are not available, and that PW12 admits that all that he noted and reported are not 100% correct. He also pointed out that such a news Report did not appear in any other newspaper. The Learned counsel for Respondent therefore contended that the evidence of PW12 should be rejected as unreliable and at all events his evidence is not sufficient to meet the high degree of proof required to prove an election corrupt practice.

14. The Supreme Court had occasion to consider as to how an allegation of election corrupt practice based merely on a newspaper report should be dealt with.

14.1) In *SAMANT N BALAKRISHNA vs GEORGE FERNANDEZ [AIR 1969 SC 1201],* Supreme Court, held thus:

> *"The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced... A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."*

14.2) In *MANMOHAN KALIA vs YASH [(1984) 3 SCC 499]* the Supreme Court held thus:

> *"It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied, very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process... it is very difficult for a court to rely on news item published on the information given by correspondents because that may not represent the true state of affairs. ... In the instant case, there is no evidence to show the actual record of the speech made... and therefore the said new item does not advance the case of the appellant... particularly, when it was stoutly denied by the respondent..."*

In that case the speech was sought to be proved by the evidence of two persons who attended the meeting corroborated by a Newspaper Report. The Sub-Editor of the newspaper who had no personal knowledge was examined, but not the reporter.

14.3) Therefore while a newspaper report by itself may not be evidence of what occurred, it can be taken into account if it is supported by direct evidence and corroborated by reliable evidence.

15. In this case the News Report is no doubt supported by the evidence of the News Reporter (PW12). But there is no corroboration. No one else who attended the meeting has been examined. A recording of the speech is not available. The record/note made by PW12 in regard to the speech is not available. No other newspaper has reported any such speech. Respondent has specifically denied the statement alleged. Having regard to the degree of proof required in such matters, in the absence of any corroboration, the newspaper report at ExP2(a) supported by the evidence of the Reporter (PW12) cannot be accepted as proof of the statement at ExP2(b). It is true that PW12 is not an interested witness. It is true that his evidence does not appear to be untrustworthy. But the notes made by him of the speech is not available. He claims to have made notes of highlights of a speech running to 110 minutes. Therefore it is not possible to hold that the Report is a true and correct record of what was stated by the Respondent. His uncorroborated evidence in the absence of any notes or record of the speech, is not sufficient to meet the strict requirements of proof required to prove an election corrupt practice. I may recall the following observation of the Supreme Court in
RAHIM KHAN's case [supra]:

> *"The fact that we are not ready to act on the testimony of a person does not mean that he is a perjurer. It merely means that on such testimony it is not safe to conclude in a quasi-criminal proceeding that the 'corrupt practice' has been proved beyond reasonable doubt... We must emphasize the danger of believing at its face value of oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practice may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes... The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."*

Therefore I hold that the petitioner failed to establish beyond reasonable doubt the allegation that the respondent has made a statement as per ExP2(b) in his speech at Anekal.

16. This takes us to the third part of Issue No. 1. As I have held that petitioner has failed to prove that Respondent made a statement as per ExP2(b), the third part of Issue No. 1 does not survive for consideration. But I will assume that such a statement was made by the respondent to examine whether it amounts to promoting or attempt to promote feeling of enmity or hatred between different classes of citizens on the ground of religion. During arguments, the Learned Counsel for the petitioner submitted that though in the petition, it has been contended that the Respondent's speech at Anekal violated both sub-sections (3) and (3-A) of Section 123 of the Act, he would restrict his submission to Sub-Section (3A) and not sub-section (3) of Section 123. The Learned Counsel for Respondent also pointed out that it is not the case of the petitioner either in the petition or in evidence that the respondent had made any appeal to vote or refrain from voting for any person on the ground of religion, as contemplated in sub-section (3) of Section 123. Therefore the matter is examined with reference to Section 123(3A) of the Act.

17. Petitioner strongly relied on the decision of the Supreme Court in *DAS RAO DESHMUKH vs KAMAL KISHORE NANASAHEB KADAM [AIR 1996 SC 391].* Considering the question whether display of a poster containing an appeal to vote for the returned candidate for the purpose of "teaching a lesson to Muslims" amounted to corrupt practice, the Supreme Court held thus:

> *"Such appeal, to say the least, was potentially offensive and was likely to rouse passion in the minds of the voters on communal basis. Such appeal to teach a lession was also likely to bring disharmony between the two communities namely the Hindus and the Muslims and offended the secular structure of the country. In our view, use of such poster by itself is sufficient to hold that the appellant had indulged in corrupt practice under S.123(3) and 123(3A) of the Representation Act."*

There can be no doubt that if the remarks were potentially offensive and likely to rouse passion in the minds of the voters on communal basis, Section 123(3A) will be attracted. But the question is whether in this case, the remarks attributed to the respondent were potentially offensive, likely to rouse passion in the minds of the voters on communal basis.

18. Before doing so, it is also necessary to keep in mind the further observations in *DAS RAO DESHMUK* [supra] as to how election speeches should be viewed. The Supreme Court pointed out that reasonable latitude should be given to election speeches. It pointed out:

"We may, however, indicate the speeches delivered in the election meeting by leaders of political parties should be appreciated dispassionately by keeping in mind the context in which such speeches were made. This Court has indicated a note of caution that in election speeches appeals are made by candidates of opposing political parties often in an atmosphere surcharged with partisan feelings and emotions. Use of hyperboles or exaggerated language or adoption of metaphors and extravagance of expression.... are very common and Court should consider the real thrust of the speech, without labouring to dissect one or two sentences of the speech, to decide whether the speech was really intended to generate improper passions on the score of religion, caste, community etc. In deciding whether a party or his collaborators had indulged in corrupt practice regard must be had to the substance of the matter rather than mere form or phraseology."

19. In *D.R. RAMESH YESWANT PRABHOO vs PRABHAKAR KASHINATH KUNTE (AIR 1996 SC 1113),* the Supreme Court cautioned thus:

"Mere reference to any religion in an election speech does not bring it within the net of sub-section (3) and/or Sub-Section (3A) of Section 123, since reference can be made to any religion in the context of secularism or to criticise any political part for practising discrimination against any religious group or generally for preservation of the Indian Culture."

The Supreme Court held that words used in a speech to promote secularism or to 'emphasise the way of life of Indian People is unobjectionable.

20. Let me now analyse the "offensive" remarks attributed to the Respondent. The first sentence is *"If am elected to Lok Sabha, I will question everything."* There is nothing improper or offensive in it as it merely refers to the duty of every member of parliament to question injustice. The second and third sentences attributed to the respondent are: *"I will not keep quiet if Mosques and Churches are demolished. I cannot keep quiet if Koran and Bible are burnt"* India is a secular country, where religious freedom is guaranteed. If the intention of the words used are to promote secularism or to safeguard rights of religious minorities, or to prevent attack on any places of worship of any religion or to prevent showing of disrespect to the Sacred Books of any religion, such words cannot be considered to be offensive, nor will they attract Section 123(3-A) of the Act. A statement by a citizen in a secular country that he would not tolerate if any place of worship of any religion is demolished or if holy book of any religion is burnt, cannot obviously be considered as promoting feeling of enmity or hatred between different classes of citizens. A statement supporting secularism or in furtherance of secularism, cannot be considered as offensive in a country wedded to secularism. The remarks attributed to Respondent, even if true, would merely show that he was establishing his secular credentials and nothing more. I may recall in this context, the following observations of the Supreme Court in *Z.B. BUKHARI vs B.R. MEHRA (AIR 1975 SC 1788)* reiterated in *S. HARCHARAN SINGH vs S. SAJJAN SINGH (AIR 1985 SC 236):*

"Section 123, Sub-Sections (2), (3) and (3A) were enacted so as to eliminate from the electoral process, appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our constitution, and indeed, of any civilised political and social order. Due respect for the religious beliefs and practices,... of other citizens is one of the basic postulates of our democratic system. The line has to be drawn by courts, between what is permissible and what is prohibited, after taking into account, the facts and circumstances of each case, interpreted in the context in which the statements... complained of were made."

21. In the result, Issue No.1 is answered as follows:

a) The respondent addressed a public meeting organized at Anekal on 31.1.2002.
b) Petitioner failed to prove that the respondent made the remarks attributed to him as per ExP2(b).
c) Even assuming that the respondent had made such remarks, it does not amount to promotion or attempt to promote enmity and hatred between Hindus and Muslims/Christians on the ground of religion, which is a corrupt practice under Section 123 (3A) of the Act.

RE: ISSUE No 2:

22. The second issue also consists of three parts viz., (i) Whether there was a public meeting on 17.2.2002 at 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79; (ii) whether the said function was organized by the respondent or his

supporters with the consent of the respondent to distribute rice packets and request for votes; and (iii) whether at the said meeting the respondent, or any of his supporters with his consent, distributed rice packets to the residents of 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79, to woo the voters.

23. Petitioner contends that the respondent and his supporters organised a function on 17.2.2002 ostensibly to celebrate the birthday of Sri Balagangadharanatha Swamy and for Sri Muneswaraswamy and Marammadevi Pratishtapana and Building inauguration, only as a guise to distribute rice packets in order to woo the voters and therefore the respondent committed a corrupt practice under Section 123(1)(A)(b) of the Act. It is pointed out that the said section provides that offering any gift (or offer or promise) by a candidate (or his agent or other person with the consent of the candidate of his election Agent), with the object, directly or indirectly, of inducing an elector to vote for him at the election, would amount to a corrupt practice of bribery. In support of said contention, the petitioner relied on ExP3, ExP8 and ExP12 and the evidence of PWs 1, 5, 8, 9, 10, 11 and 13. The petitioner also relied on the decision of the Supreme Court in *ABDUL HUSSAIN MIR vs SHAMLAL HUDA* reported in *1975(4) SCC 533,* which holds that to make out a case of bribery under Section 123(1)(A), a mere offer or promise by the candidate is enough.

24. ExP3 is a xerox copy of the pamphlet/invitation with the following caption: *"Sri Muneswaraswamy and Marammadevi Pratishtapana and Building Inauguration Function.",* followed by a smaller caption *"And Distribution of Rice to Poor Families in connection with Sri Sri Sri Balagangadharanatha Swamiji's Birthday".* It shows that the proposed function was scheduled to be held on 17.2.2002 between 10.30 to 10.00 am at 3rd Main Road, Ganganna Extension, Sannakkibylu, Vrushabavathi Nagara, Kamakshipalya, Bangalore-79. It says that the function will be inaugurated by Sri Balagangadharanatha Swami and the respondent would preside over the function. It also shows the names of several leaders of the political party of respondent as chief guests and others as special invitees. ExP8 is the copy of the complaint given by one of the rival candidates, B.G. Dyavegowda, to the Election Commission of India, stating that the said function had been arranged at the instance of the respondent for distribution of rice for the furtherance of his prospects in the election and it amounts to corrupt practice of bribery. ExP12(a),(b) and (c) are extracts from the Station House Diary of Kamakshipalya police station in regard to *bandobust* arrangement made for a function held on 17.2.2002 at Kamakshipalya attended by the Respondent.

25. PW1 [petitioner] has referred to the incident, but he had no personal knowledge of the function, as he did not attend the function. His evidence is mere hearsay. He stated that he was informed that rice was distributed at the function with a request to vote for the respondent. He also admitted that Sri Balagangadharanath Swami did not participate in the function. PW5 [Bhushan Shende] is an Under Secretary in Election Commission of India, New Delhi. He merely produced a fax copy of the complaint received from B.G. Dyavegowda and his evidence is relevant only to show one of the candidates, had made a complaint to Election Commission of India on 17.2.2002 about the proposed meeting for distribution of rice. PW11 (D.V. Shivanna) who is the Station House Officer, Kamakshipalya Police Station, has produced the station house diary, which shows that some police officers were assigned for bandobust duty in regard to the meeting held on 17.2.2002, scheduled to be addressed by H.D. Deve Gowda. He has no personal knowledge of the meeting.

26. PW8 [Venugopal], PW9 [Vasanthkumar] and PW10 [Ranganath] are residents of the locality, who claim to have attended the said meeting on 17.2.2002.

26.1) PW8, resident of Ranganathapura, claims to have attended the said function for about half-an-hour between 12.30 and 1.00 pm. He states that rice packets (about 2 kgs each) were distributed to the public, in the presence of the respondent, by his followers with a request to vote for their party. He however, admitted that he did not receive any rice packet and that he saw the rice packets only from a distance. He states that Sri Balagangadharanatha Swami attended the meeting but had left by the time he went to the place of meeting. It is of some relevant to note petitioner (who has been examined as PW1), PW9 and PW10 categorically stated that Sri Balagangadharanatha Swami did not attend the meeting.

26.2) PW9 [Vasanthkumar] claims to be an auto driver, residing at Cauveripura, Kamakshipalya and says that he attended the function held on 17.2.2002 at 12.30 p.m. at 3rd Main Road, Ganganna Extension, Sannakkibylu in connection with the birthday celebration of Sri Balagangadhara Natha Swami. He says that the function was organised by members of Janata Dal and was attended by Respondent, Siddaramaiah, Somanna and Bachegowda who addressed the meeting and requested the public to vote

for the respondent; that after completion of the meeting, rice was distributed by one Umashankar, who was a member of the Pattanagere City Municipal Council; that he received a packet of rice containing 3 kgs and while handing over the packet, he was requested to vote for Janata Dal, but he cannot give the name of the person who gave rice packet to him; and that as Umashankar belonged to Janata Dal, he assumed that the persons who distributed rice packets belong to Janata Dal. In the cross-examination, this witness stated that the meeting ended at 2.30 p.m and Sri Balagangadharanatha Swamiji did not attend the meeting. The statement in his examination-in-chief that rice packets were distributed after completion of the meeting and the statement in the cross-examination that the meeting ended 2.30 pm would mean that rice packets were distributed after 2.30 pm, according to him.

26.3) PW10 [Ranganath] who claims to be a resident of Kamakshipalya, Bangalore, stated that he attended the function between 12.30 and 1.00 pm; that the function started at 12.30 pm and ended at 3.00 pm; that Sri Balagangadhranatha Swamiji did not attend the said function; that the respondent attended the function and requested to vote for his party; that after the function ended, Umashankar distributed two or three packets of rice; that when three packets of rice were given to him, he was requested to vote for Janata Dal; and that he told the petitioner about his receiving of rice packets. He puts the time of distribution of rice as after 3.00 p.m.

26.4) A combined reading of the evidence of PWs 1, 8, 9 and 10 shows the following discrepancies in the evidence let in by petitioner: (a) While PW1, 9 and 10 categorically stated that Sri Balagangadharanatha Swami did not attend the function, PW8 stated that Sri Balagangadharanatha Swami attended the function; (b) The specific pleading in the petition is that rice was distributed to the residents of the 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79. None of the residents of said locality are examined. PWs 9 and 10 who claim to have received rice packets are not residents of 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79; (c) The pleading is that rice distribution was done by the Respondent to the residents of 3rd Main Road, Ganganna Extension. But none of the witnesses say that Respondent distributed any rice packets, much less rice packets to the residents of 3rd Main Road, Ganganna Extension; (d) PW8 stated that he was present between 12.30 and 1.00 pm and when he was present rice packets were distributed with a request to vote for the party. As against this, PW9 stated that rice packets were distributed after the end of the function after 2.30 pm. On the other hand PW10 stated that rice packets were distributed after 3.00 pm. There is, thus, a variance about the time of alleged distribution of rice; (e) PW8 stated that rice packets were weighing about 2 kgs and what was distributed was one packet per person. PW9 stated that each rice packet weighed about 3 kgs of rice and one packet was distributed to each person. PW9 stated that each person was given two to three packets of rice; (f) The pleading in the petition is that Siddaramaiah [ex-Deputy Chief Minister], M. Srinivas [MLA], H.D. Kumaraswamy [ex-MP], P.G.R. Sindya [ex-Minister and MLA], N. Bachegowda [MLA] and B. Somanna [MLA] and others mentioned in the Invitation distributed the rice packets. But none of the three witnesses [PWs 8, 9 and 10] stated that rice packets were distributed either by the respondent or by Siddaramaiah [ex-MP], P.G.R. Sindhya, [ex-Minister and MLA], N. Bachegowda [MLA] and B. Somanna [MLA]. While PW8 stated that he does not know the name of person who distributed the rice packets and says that he witnessed the distribution from a distance, PWs 9 and 10 say that rice packets were distributed by one Umashankar, who is a member of Pattanagere City Municipal Council; g) The petition avers that Venugopal [PW8] was a recipient of rice packet. But, PW8 says that he did not receive any rice packet; h) Petition avers that one Byrappa [PW 13] received a rice packet. But, he denies that any rice was distributed.

27. PW 13 [Byrappa] a resident of Kamakshipalya, has deposed that there was a function relating to birthday celebrations of Sri Balagangadharanatha Swami at Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, on or about 17.2.2002 and he went to the function at 4.00 pm and at that time, Bachegowda and Somanna [MLAs] and other dignitaries gave speeches, praising Sri Balagangadharanatha Swami for running educational institutions etc., that after all the dignitaries left, respondent came late and also spoke praising Sri Balagangadharanatha Swami; that except giving speeches nothing happened in the said function and no one gave anything to anyone; that the people assembled because it was mentioned that Sri Balagangadharanatha Swami would attend the function and that when subsequently it became known that he was not going to attend the meeting, people dispersed from the place. At that stage of evidence, learned counsel for the petitioner sought leave to cross-examine PW13 on the ground that he has turned hostile. Nothing is elicited from the cross-examination to show that PW13 was won over by the respondent, as alleged by the petitioner.

28. It is also possible that what is stated by PW13 is true and the version of PWs 8, 9 and 10 is not correct in view of the discrepancies in the evidence of PWs 8 to 10. The genuineness of the invitation card/pamphlet is also in doubt. PW1 has admitted that when he verified at the address of the press given in the xerox copy of the invitation, there was no such press. There is no direct documentary evidence or video film to prove that either the respondent or any of his supporters participated in the said function or distributed rice packets. No resident of 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79 has been examined to show that they received rice packets. When the specific plea in the petition is that rice packets were distributed to the residents of 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79, an attempt should have been made to examine a resident of that Road, PWs 8 to 10 who have stated that rice packets were distributed to them are, admittedly, not residents of 3rd Main Road, Ganganna Extension, Sannakkiballu, Hrushabavathi Nagara, Kamakshipalya, Bangalore-79. The entries in the Station House Diary ExP12(a)(b)(c) however indicate that Respondent attended a meeting at Kamakshipalya on 17.2.2002. Respondent had admitted that he was attending nearly 20 meetings every day at that time and therefore not able to remember the names of each place where he attended a meeting.

29. If the voters had been offered or given rice packets with an object of inducing them to vote for the respondent, that would no doubt amount to a corrupt practice. But, as noticed above, charges of corrupt practice are to be equated with criminal charges and proof beyond reasonable doubt should be produced. Out of the four eye witnesses, one is treated as hostile. In regard to the evidence of other three (PW8 to 10), I have already noticed the several inconsistencies between the pleading on the one hand and their evidence on the other hand, apart from the discrepancies among their evidence. PWs9 and 10 are persons known to the petitioner. PW8 strangely says that he has seen the petitioner, but not acquainted with him. It is obvious that all three persons are known to petitioner. Otherwise petitioner could not have identified them as persons who attended the meeting. It is difficult to believe that PW8 to PW10 are disinterested witnesses. To bring home the charge of corrupt practice in an election petition, the petitioner will have to establish the specific charge made in the election petition beyond reasonable doubt. The plea is that respondent distributed rice packets. But none of the witnesses say that Respondent distributed Rice Packets. The election petition specifically states that Siddaramaiah (Ex-Deputy Chief Minister), P.G.R. Sindhya (MLA and Ex-Minister), N. Bachegowda (MLA & Ex-Minister), V. Somanna (MLA and Ex-Minister), and H.D. Kumaraswamy (Ex-MP) distributed rice packets. But none of the witnesses say that they distributed rice packets. It is not sufficient to prove that rice packets were distributed in connection with birthday celebration of Sri Balagangadharanatha Swami or in connection with pratishtapana and building inauguration of Sri Muneswaraswamy and Marammadevi temple. It is not sufficient to prove that some one distributed rice packets. It should be proved that respondent or his agent or any other person with the consent of respondent or his election agent, distributed the rice packets, as gratification, with the object of inducing the electors to vote. It has to be held that the petitioner has failed to prove any such corrupt practice. Hence, Issue No. 2 is answered as follows:

a) It is probable that the Respondent attended a meeting at Sannakkibailu, Kamakshipalya, Bangalore, on 17.2.2002.
b) Petitioner failed to prove that the respondent or his supporters organized the said meeting as a function in connection with Birthday Celebration of Sri Balagangadharanatha Swami and Temple Prathistapana and Building Inauguration, as a cover for distribution of rice packets to induce voters to vote for the respondent; and
c) Petitioner failed to prove that respondent, or anyone else with the consent of respondent or his Election Agent, distributed rice packets in his presence or with his consent to any one as an inducement for voting in his favour.

ISSUE No 3:

30. The case of the petitioner in the election petition is that the respondent by using his financial and political clout in the media, in particular with *Udaya* TV, got telecast an appeal by his wife Channamma on the night of 20th February, 2002, requesting the voters to vote for her husband [respondent] on the ground that he had done many things for the State of Karnataka and it would be his last election; that as she was under medical treatment for many months by then for burn injuries and had difficulty even to speak, her appeal was used to cause sympathy. It is contended that such act of respondent amounted to

exercise of undue influence to interfere with the exercise of electoral rights under Section 123(2). It is also contended that as the said appeal was made by means of a telecast during the prohibited period of 48 hours before the end of the hour fixed for conclusion of Poll, the respondent also committed an electoral offence under Section 126(1)(b) of the Act.

31. The petitioner (PW1) in his evidence stated that on 20.2.2002 Chennamma appeared in *Udaya* TV and E-TV with the symbol of Janata Dal (S) in the background and appealed to the general public/voters to vote for the Respondent (for the) last time, as he has done a lot for the people of Karnataka. He further deposed that at the time of such appeal, Chennamma was very humble and appealing intended to create a sympathy wave for the respondents; and that because of the said last minute appeal by Chennamma, lot of votes which would have gone to Congress (I) candidate, went to respondent. PW1 has also relied on the letter dated 25.2.2003 [ExP4] issued by *Udaya* TV to Janata Dal office, stating that slot charges for promos aired on the channel is Rs. 50,000/-; and the advertisement handling and Bill Statement sheet [ExP5] issued by E-TV to Sri D.L. Jagadish, which contains the bill for the month of February, 2002 showing that three slots were used on 20.2.2002 at 7.24.54, 8.19.34 and 9.14.09 for telecasting an Advertisement Captional 'Devegowda-30' running for 30 seconds each. Petitioner claimed that those slots in the E-TV, were used for appeal by Smt Chennamma. It is also pointed out that the said advertisement was also telecast on 17.2.2002, 18.2.2002 and 19.2.2002. But petitioner has not referred to any telecast of advertisements in the E-TV, in the petition. He has referred to the *Udaya* TV telecast. In his evidence, petitioner stated that he had personally seen the telecast regarding Smt Chennamma's appeal on E-TV on 20.2.2002. He admitted that in ExP5 [E-TV advertisement handling sheet] issued to D.L. Jagadish, there is no reference to telecast of any episode relating to Smt Chennamma. He has also admitted that except ExP5 he has no material to show that Smt Chennamma appeared on TV and made any appeal on behalf of respondent.

32. The Area Manager of E-TV (M. Venkata Giridhar) has been examined as PW2. He has stated that he is not in a position to produce any video cassette in regard to any telecast made on 19th, 20th or 21st February 2002, as E-TV doest not maintain the software relating to telecast beyond three months. He also stated that with reference to ExP5 that a commercials of 30 seconds duration known as "Devegowda-30" relating to Janata Dal were telecast thrice on 19.2.2002 and again thrice on 20.2.2002, to the account of D.L. Jagadish. He has stated that he does not know that contents of advertisement commercial "Devegowda-30".

33. The Manager (Personnel and Administration) of *Udaya* TV - R Yathiraj - has been examined as PW4. He has deposed that Janata Dal party, to which respondent belongs, had bought some advertisement slots from *Udaya* News in connection with the election; that Respondent has not personally booked any slots; that they do not preserve video tapes beyond three months and they do not have the tape relating to the said telecast made in February, 2002. He stated with reference to ExP9, P10 and P11 that three Janata Dal promos were telecast on 16.2.2002 at 6.30 pm, 7.30 and 8.30 pm; that three Janata Dal promos were telecast on 17.2.2002 at 6.30 pm, 7.30 pm and 8.30 pm; that four Janata Dal promos were telecast on 18.2.2002 at 3.00 pm, 4.00 pm, 4.30 pm and 5.00 pm; and that each promo was a duration of 20 seconds.

34. Tejaswini Sriramesh, News Editor of *Udaya* TV, was examined as PW3, She confirmed that she had covered the election of Kanakapura constituency which was held on 21.2.2002; that *Udaya* TV has not maintained the tapes relating to the coverage of said election; and that the video tapes were destroyed after three months. In reply to a question as to whether she had any video tape relating to advertisement where Chennamma wife of the respondent, made an appeal, she stated that did not remember whether there was any such appeal by Chennamma. She however stated that she had interviewed Chennamma in a routine manner as a member of the family of a contestant; that she does not recollect the date of interview; and that the said interview was telecast on 16th or 17th February, 2002. She has also made a distinction between telecast of a news item as a part of the news and an advertisement taken out by a customer. She stated that *Udaya* TV has not telecast any advertisement containing any appeal by Chennamma.

35. Respondent has been examined as RW1. He categorically denied having arranged any interview by his wife either with E-TV or *Udaya* TV. He stated that when *Udaya* TV requested him to participate in a programme to put forth his stand as a candidate, he did not participate as it would violate terms of the Election Commission directions. In regard to the advertisement promos, respondent stated that his party workers had taken out advertisements both in print media and electronic media to support his candidature

and such advertisements were taken because of their affection towards him and not under any instructions from him; and that he does not have particulars of any such advertisements. He has also stated that he never asked his wife Chennamma to appear in the electronic media and to his knowledge, his wife had not given any interview to electronic media in connection with the election.

36. The evidence of PW2, PW3 and PW4 make it clear that neither Janata Dal nor the respondent nor any one on his behalf, purchased any teletime for telecasting any advertisement promo containing any appeal by Chennamma in E-TV or Udaya TV. It is however possible that Chennamma might have appeared in the news as one of the family members of the respondent. In the absence of any tape showing the contents of the advertisement and in the absence of any documentary evidence to show that the respondent or anybody authorized by him had telecast any advertisement containing an appeal of Chennamma - wife of respondent, it is not possible to accept the case of petitioner that the respondent got telecast an appeal by Chennamma on 20.2.2002 in *Udaya* TV.

37. In view of the above, Issue No. 3 is answered in the negative, holding that the petitioner had failed to prove that the respondent telecast an appeal by his wife on 20.2.2002 with an intention to unduly influence the voters to vote for him or to interfere with free exercise of electoral right of any voter.

RE: ADDL. ISSUE:

38. The case put forth in the petition is that the respondent (assisted by his sons H.D. Revanna and H.D. Kumaraswamy and other family members, along with Siddaramaiah and V. Somanna) took some citizens under threat into their custody at 4.00 a.m. on 21.2.2002 (day of the poll), made them semi-nude, beat them up and used *Udaya* TV to telecast the incident on the day of the incident on hourly basis with the following intentions: (i) to make voters vote against Congress Candidate; (ii) to woo the voters to vote for respondent; (iii) to influence the voters from not coming to the polling booths. It is alleged that by such an incident, the respondent and others have indirectly interfered with the electoral right of voters, to prejudicially affect the Indian National Congress candidate and as a consequence 50,000 to 60,000 voters were prevented from exercising their vote.

39. The petitioner (PW1) has given evidence stating that the respondent and his supporters created a fear psychosis on the date of polling by adopting the following procedure: They got some of their supporters from Mysore by buses and they were made to get down at Jnanabharathi gate on the outskirts of Bangalore city at about 4.00 am on the date of poll; and their clothes were removed and they were made semi-nude and beaten up in public and then taken to GNR Kalyanamantap, Jayanagar, Bangalore. He stated that the said incident was given wide publicity in the electronic media by 7.00 am on the date of poll and was also reported in special edition of two evening Newspapers - *Ee Sanje and Sanjevani* which brought out their editions in the morning itself. According to PW1, this was done to create a fear psychosis among the voters so that the voters sympathetic to Indian National Congress would not come and vote; and as a result, a large number of voters did not stir out of their houses nor came for voting.

40. Firstly the petitioner has no personal knowledge of the incident and no one who has seen the incident or who was a victim of the incident has been examined. No voter has been examined to prove that the incident created a fear psychosis and prevented them from voting. Secondly the incident, as narrated in the petition and as narrated in the evidence of PW1, bristles with following inconsistencies.

	In the petition	In the evidence of petitioner
1	There is a specific reference to H.D. Kumaraswamy, H.D. Revanna, Siddaramaiah and V. Somanna as having participated in the act, along with Respondent	There is reference to only to Respondent and his supporters
2	Some citizens were forcibly taken under threat and were made semi-nude and beaten up	Respondent and supporters got some of their own supporters from Mysore, made them get down at Jnanabharathi gate on the outskirts of Bangalore, their cloths were removed and made semi-nude and beaten up in public.
3	No reference to GNR Kalyana Mantapa	The persons beaten up were taken to GNR Kalyan Mantap in Jayanagar, Bangalore
4	Respondent used *Udaya* TV to telecast the incident on the day of the poll on hourly basis	No reference to *Udaya* TV or telecast on hourly basis. On the other hand states "This was given wide publicity in the electronic media by 7.00 am on the date of the poll".

	In the petition	In the evidence of petitioner
5	No reference to such Newspaper reporting	Incident was reported in Special Editions of Two Evening Newspapers (*Ee Sanje and Sanjevani*) which were brought out at 9.30 am itself.

The submissions made during arguments by parties suggests the following permutations and combinations in regard to the incident:

i) Some persons were forcibly taken by respondent's supporters and stripped and beaten up to create fear psychosis.
ii) Some supporters of Respondent came voluntarily from Mysore at the instance of Respondent, to get stripped and beaten up to create fear.
iii) Some persons were forcibly taken by party workers/supporters of Congress or other contesting parties to create fear psychosis.
iv) Some supporters of Respondent who came from Mysore, were waylaid and beaten up, by supporters of Congress Candidate or other candidate.
v) No one was stripped or beaten up and some persons had merely assembled at GNR Kalyana Mantapa to create false propaganda.

I have referred to the above, only to show that the pleading and evidence is wholly insufficient to prove any corrupt practice by anyone.

40. The Respondent has denied that he or his family members did any such act. In the cross-examination of respondent, the petitioner's counsel suggested that the incident took place at GNR Kalyan Mantap, thereby shifting the place of incident from Mysore Road (Jnanabharathi) on the outskirts of Bangalore to a place within the city. That is also denied by Respondent.

41. The only documentary evidence produced by the petitioner is a copy of *Sanjevani* newspaper dated 21.2.2002 which is marked as Exp13. A picture (photo) of Respondent pointing out to some clothe etc., (in the first page of the Newspaper) is marked as ExP13(a). It does not prove that the respondent got anyone form Mysore and got them disrobed and beaten up. The newspaper report refers to exchange of accusations and trading of charges by Janata Dal and Congress against each other as responsible for some incident which appeared to have happened on the morning of 21.2.2002. But, the said report in the newspaper is not marked and is not evidence. Even if it had been marked, it would have been of little evidentiary value in the absence of strong corroborative evidence. If the evidence of PW1 who admittedly has no personal knowledge is excluded, there is absolutely no evidence in regard to the alleged incident. Hence it has to be held that petitioner has failed to prove the incident. Additional Issue is answered in the negative.

RE: ISSUE No 4:

43. There is absolutely no material to name Sri Siddaramaiah, Sri Byregowda, Sri M. Srinivas, Sri Rameshkumar, Sri H.D. Revanna, P.G.R. Sindhya, Sri N. Bachegowda, Sri V. Somanna or H.D. Kumaraswamy or any one else as persons involved in any electoral corrupt practice under Section 99 of the Act. In fact the learned counsel for the petitioner fairly submitted that he does not press the prayer for naming any persons as persons involved in any electoral corrupt practice under Section 99. Hence, Issue No. 4 does not arise for consideration.

RE: ISSUE No 5:

44. In the light of the discussions, it has to be held that petitioner has not established that the returned candidate [respondent] is guilty or any corrupt practice as defined under Section 123 or that the Respondent violated any provision of Section 125 of the Act. As a consequence, this election petition is dismissed with costs. The petitioner shall pay a cost of Rs. 5000/- to the Respondent.

Deputy Registrar,
High Court of Karnataka,
Bangalore.

PR-80

TAPAS KUMAR
Secretary,
Election Commission of India.